No. 303.
Bf. of Blodgett & Kretzinger
Filed for Appellee (Co
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JAMES H. MCKENNEY
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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1898.

Filed Jan 20, 1899.

No. 303.

CHARLES E. POPE, RECEIVER OF CHICAGO & SOUTH ATLANTIC RAILROAD COMPANY, *Appellant,*

vs.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY, *Appellee.*

Appeal from the Circuit Court of Appeals for the Seventh Circuit.

NOTICE, MOTION TO DISMISS APPEAL AND BRIEF IN SUPPORT THEREOF.

HENRY W. BLODGETT,
G. W. KRETZINGER,
E. C. FIELD,
FOR APPELLEE.

Barnum & Wilson Printing Company, Chicago.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1898.

No. 303.

CHARLES E. POPE, Receiver, *Appellant,*
vs.
LOUISVILLE, NEW ALBANY AND CHICAGO RAILWAY COMPANY, *Appellee.*

Appeal from the Circuit Court of Appeals for the Seventh Circuit.

Motion to Dismiss the Appeal for want of Jurisdiction.

And now comes the appellee and moves this court to dismiss the appeal in this cause upon the ground that the decree of the Circuit Court of Appeals is final, and no appeal lies to this court.

STATEMENT.

This appeal was taken by appellant from a judgment of the Circuit Court of Appeals for the Seventh Circuit, reversing a decree rendered by the Circuit Court for the district of Indiana, against appellee, which appeal appellee moves this court to dismiss for the reasons:

1. That appellant brought this suit as receiver, and

the suits in which he was appointed receiver depended exclusively for federal jurisdiction upon diversity of citizenship of the parties thereto.

2. That appellant's suit depends for federal jurisdiction, either upon diversity of citizenship, alleged in his amended bill of complaint, or upon the ground that his suit is ancillary to the suits in which he was appointed receiver; and that the suits on which he was so appointed did exclusively depend for federal jurisdiction upon diversity of citizenship; and in either case the judgment of the United States Circuit Court of Appeals is final, for which no appeal to this court is provided in the United States Circuit Court of Appeals act.

3. This case involves no federal question, and presents no question arising under the constitution or laws of the United States.

On February 1, 1898, appellee filed in this court the record in this case taken from the Circuit Court of Appeals, together with its petition for *certiorari*, which record was afterwards, by stipulation, and order thereon, filed in this case.

This record is voluminous, and appears printed in four volumes.

To aid this court to more easily examine that part of the record pertinent to this motion, we submit herewith a short record taken from the transcript on file in this court, containing, appellant's amended bill, upon which the case was tried, the Pettit bills upon which appellant was appointed receiver of the Atlantic Company, decree of the Circuit Court, the opinion of the court of Appeals, etc.

AS TO AVERMENTS OF JURISDICTIONAL FACTS IN APPELLANT'S AMENDED BILL, UPON WHICH THIS CASE WAS TRIED.

1. "Your orator, Charles E. Pope, who is receiver of the Chicago & South Atlantic Railroad Company, and who is a citizen of the State of Illinois, brings this his amended bill of complaint—leave therefor having been granted by this court," etc. (See Short Rec., p. 3.)

Then follows the names of the parties defendant, with the averments that they are severally citizens of the States of Indiana, Ohio, New York and Kentucky.

2. And further avers that on December 31, 1880, he was appointed receiver of the Atlantic Company "in a certain suit in equity then pending in the Circuit Court of the United States for the Northern District of Illinois, wherein John B. Pettit and others were plaintiffs, and the Chicago & South Atlantic Railroad Company was defendant." (Short Rec., p. 3.)

That afterwards, in a certain suit in equity then pending in the Circuit Court of the United States for the District of Indiana, wherein John B. Pettit was plaintiff and the Chicago and South Atlantic Railroad Company was defendant, he was appointed receiver of the Atlantic Company, and that he is still acting as receiver under these appointments. (See amended bill, appellee's short Rec., page 3.)

3. Appellant further averred that he was authorized by express order of both courts appointing him receiver, "to bring all suits necessary and proper to be brought, to recover possession of said estate, and effects, and to enforce all claims," etc. (See amended bill, short Rec., p. 4.)

No federal question or questions arising under the constitution or laws of the United States were averred, or appear in appellant's amended bill.

THE SUITS IN WHICH APPELLANT WAS APPOINTED RECEIVER EXCLUSIVELY DEPENDED FOR FEDERAL JURISDICTION UPON DIVERSITY OF CITIZENSHIP.

The first suit was brought in the Circuit Court for the Northern District of Illinois, by Ball and Pettit, the bill alleging that Ball was a citizen of Indiana, and that Pettit was a citizen of Wisconsin, and that the defendants were citizens of Indiana and Illinois.

Thereafter, on proper motion and order thereon, the suit was discontinued as to Ball, leaving Pettit, a citizen of Wisconsin, *sole* plaintiff, and all the defendants citizens of Indiana and Illinois.

Upon the bill in this suit, the Circuit Court of the United States for the Northern District of Illinois, appointed appellant receiver of the Atlantic Company of Illinois. (See Illinois Pettit bill, short Rec., page 35.)

In the bill filed by Pettit in the Indiana Federal Court, he was the sole plaintiff, and averred that he was a citizen of the State of Wisconsin, and the defendant, "the said Chicago and South Atlantic Railroad Company, a corporation organized under the laws of the State of Indiana and Illinois, by consolidation with an Illinois corporation of the same name as defendant herein, and an Indiana corporation known as the Chicago and South Atlantic Railroad Company of Indiana." (See Indiana Pettit bill, short Rec., page 43.)

Pettit averred in his Indiana bill that appellant had theretofore been appointed receiver of the Illinois

Atlantic by the Illinois federal court in his suit there brought.

Both Pettit bills showed upon their face that plaintiffs were floating creditors, without judgment, and that their pleadings are in the nature of creditors' bills, praying for a money decree on drafts and notes.

It was further alleged in the Illinois Pettit bill that the Air Line and Dyer Companies, and divers other corporations, had in their possession or under their control, "tracks and roads" belonging to the Atlantic Company, and was indebted to it in "divers and large sums of money" The Indiana Pettit bill substantially repeats the averments of the Illinois Pettit bill.

No federal question or questions arising under the constitution or the laws of the United States were averred or presented by these Pettit bills. All corporate parties to these suits were incorporated under state laws.

Brief Reference to the Proceedings.

As stated, the case was heard on the amended bill, and a money decree was rendered by the Circuit Court in favor of appellant, as receiver, against appellee, for over $300,000, and appellee was adjudged by the final decree to pay the same. (See final decree, short record, page 50.)

On appeal from this decree, appellant moved the Circuit Court of Appeals to dismiss the appeal for want of jurisdiction; that such motion was overruled. (See opinion Circuit Court of Appeals on this motion, short record, page 54.)

On final hearing, the decree of the Circuit Court was reversed by the Circuit Court of Appeals, with instruc-

tions to dismiss the amended bill. The opinion of the Circuit Court of Appeals was filed June 12, 1897. This opinion recites the contracts exhibited with the amended bill, finds the undisputed facts of record and the conduct of the parties under the contracts, to which we refer for a full statement of the entire case upon the merits, if this court shall desire to consider the same in the course of the determination of this motion. (See findings of fact by Court of Appeals, short record, page 66,) and (Opinion Court of Appeals, short record, page 74.)

July 12, 1897, petition was filed in the Circuit Court of Appeals for a rehearing. November 27, 1897, this petition was overruled. (See short Rec., 85.)

On February 21, 1898, appellant filed the record in this court, with his petition and motion thereon, and brief in support of his application for *certiorari*. Upon consideration thereof, and on March 7, 1898, this court denied appellant's petition for *certiorari*.

Thereafter, and on the 23d day of March, 1898, appellant moved the Circuit Court of Appeals for leave to file a second petition for rehearing, and an elaborate brief in support thereof, which petition and argument were submitted to the court with such motion; that thereafter said motion was overruled. (See Short Rec., 85.)

That thereafter, and on the 18th day of April, 1898, appellant filed his petition in the Circuit Court of Appeals, praying an appeal to this court, which prayer was granted. (See Short Rec., 86.)

Appellant averred in his petition for appeal, to wit:

"That he is advised that this cause is not one in which the jurisdiction is dependent entirely upon the op-

posite parties to the suit or controversy being aliens and citizens of the United States or citizens of different states, nor one arising under the patent laws, or under the revenue laws, or under the criminal laws, nor an admiralty case, and that this is a case which is not made final in this Honorable Court by the Act of Congress of March 3, 1891," etc.

That the Circuit Court of Appeals, in its opinion upon appellant's petition to allow an appeal to this court, said:

> "We entertain grave doubts whether an appeal as of right will lie to the Supreme Court from the judgment of this court. This is a question, however, properly to be decided by the Supreme Court," etc. (See Short Rec., 87.)

HENRY W. BLODGETT,
G. W. KRETZINGER,
E. C. FIELD,
For Appellee.

NOTE:—The transcript of the record is on file, but has not been printed. It covers over 3,000 printed pages. Therefore the consideration and disposition of this motion before hearing may save much expense, labor of counsel and of this court.

Points and Authorities.

I.

Upon the short record here submitted we contend:

(1.) That appellant's suit as receiver is ancillary to the Pettit suits, and the ground of federal jurisdiction in appellant's case must be determined by the jurisdictional facts alleged in the original—the Pettit suits. Inasmuch, therefore, as the only ground of federal jurisdiction alleged in the Pettit bills was the diversity of citizenship of the parties; that must constitute the sole ground for federal jurisdiction in the ancillary bill or suit of appellant.

(2.) If appellant's suit was an original one, then it must depend for federal jurisdiction upon diversity of citizenship as therein alleged, (no federal question being involved) and *in either case* the judgment of the Circuit Court of Appeals is final, from which no appeal would lie to this court.

As shown, the Pettit bills were in the nature of creditors' suits, alleging an indebtedness due from the Atlantic Company to plaintiffs on drafts and notes; that the Atlantic Company was insolvent; that the Air Line Company and other corporations had in their possession assets, tracks, etc., belonging to the Atlantic Company, prayed for the appointment of a receiver, for marshaling assets, winding up the Atlantic Company, and the application by the court through the receiver, of the assets of the Atlantic Company to the payment of its debts.

Appellant brings this suit as receiver appointed in the Pettit suits, and by leave or under order of the court appointing him.

Appellant, in his bill rests his right to recover upon the alleged seizure by the Delphi of certain rights of way, and grading done thereon by the Atlantic Company under two certain contracts, (see contracts in opinion Court of Appeals, in short record here submitted) and that such seizure and appropriation by the Delphi, were fraudulently and forcibly made; that appellee acquired title thereto, and possession thereof, through its consolidation with the Air Line Company, aud that the Air Line Company acquired title thereto, and possession thereof through a foreclosure of Delphi mortgage.

> The statement of these grounds for recovery is only material for the the purpose of showing that the plaintiff's right to recover does not arise under the constitution or laws of the United States.

First, THAT THIS SUIT IS ANCILLARY TO THE PETTIT SUITS.

In *White* v. *Ewing*, 159 U. S., 36, a creditor's bill was brought by Bosworth, a citizen of Massachusetts, against a Tennessee corporation. Ewing was appointed receiver. Thereafter by leave of court the receiver brought suit against a large number of persons as makers of notes to the insolvent corporation of which he was appointed receiver.

This court held

That the Circuit Court obtained jurisdiction over the insolvent corporation, its property and its assets "by the filing of the original creditors' bill by Bosworth, a citizen of Massachusetts, and by the appointment of a receiver, and any suit by or against such receiver in the course of the winding up of such corporation, whether for the collection of its assets or for defense of its property rights, must be regarded as ancillary to the main

suit, and as cognizable in the Circuit Court regardless either of the citizenship of the parties or the amount in controversy."

In support of this rule this court cited:

Freeman v. *Howe*, 24 How., 450.
Krippendorf v. *Hyde*, 110 U. S., 276.
Dewey v. *Coal Co.*, 123 U. S., 329.
In re Tyler, 149 U. S., 164.
Root v. *Woolworth*, 150 U. S., 401.
Rouse v. *Letcher*, 156 U. S., 47.

This court further held:

> "In this case, however, the court proceeds upon its own authority to collect the assets of an estate, with the administration, of which it is charged; and, if the receiver in such cases appears as a party to the suit, it is only because he represents the court in it inherent power to wind up the estate of an insolvent corporation, *over which it has by an original bill obtained jurisdiction.* * * * There is just as much reason for questioning the jurisdiction of the court in this case upon the ground of the want of diverse citizenship, as upon the ground that the requisite amount is not involved."

In *Davis* v. *Gray*, 16 Wall., 215, the question of jurisdiction as to both plaintiff and defendant was urged. The court said:

> "The complainant was appointed to his office of receiver in the suit in equity in *Forbes* v. *The Memphis, El Paso & Pacific Railroad Company*, a corporation created by the State of Texas. The suit was in the same court whence this appeal was taken."

Later, Gray as receiver, brought suit in the same court in which he was appointed receiver, to restrain interference with his possession and control of certain prop-

erty, and the sale of such property by the defendants. Held:

> "He is not appointed for the benefit of either of the parties, but of all concerned. Money or property in his hands is *in custodia legis*. He has only such power and authority as are given him by the court, and must not exceed the prescribed limits.
>
> "Here the property in question is not in the possession of the defendants. * * * But the order of the court expressly requires the receiver to secure and protect 'the assets, franchises and rights' and 'the land grant and reservation of said company.' * * * This bill is *auxiliary* to the original suit. It is analogous to a petition by a receiver to the court to protect his possession from disturbance, or the property in his charge from threatened injury or destruction."

Carey v. *Ry. Co.*, 161 U. S., 115, is decisive of this motion. In that case motion to dismiss the appeal was sustained on the ground that the suit was ancillary, and the jurisdiction it invoked depended upon *the* diverse citizenship which gave jurisdiction to the federal court in the original suit.

To the same effect see *Gregory* v. *Van Ee*, 160 U. S., 643; and *Rouse* v. *Letcher*, 156 U. S., 48.

In *Gregory* v. *Van Ee*, *supra*, on motion to dismiss the appeal from the Court of Appeals, this court said:

> "Therefore, that, if the decree in the main suit were final, decrees in accessory and subordinate proceedings would also be final, and appeals therefrom could not be sustained."

Thus, if decrees had been rendered in the Pettit suits, it is clear that the judgment of the Court of Appeals on appeal therefrom would be final, therefore the judgment in appellant's suit by the Court of Appeals must be equally final, because the latter is ancillary to the former.

It is the inflexible rule in such cases, *namely*, that federal jurisdiction obtained in the original suit and the grounds therefor are extended to the ancillary suit without reference to the citizenship of the parties or the subject-matter of the controversy appearing in such ancillary suit.

In *Ry. Co.* v. *Ry. Co.*, 111 U. S., 522, this court, in speaking of an ancillary suit, said:

> "The bill, though an original bill in the chancery sense of the word, is a continuation of the former suit on the question of the jurisdiction of the Circuit Court. *Minn. Co.* v. *St. Paul Co.*, 2 Wall., 609."

If this suit of appellant was an original and not an ancillary one, then it must exclusively depend for federal jurisdiction upon diversity of citizenship, because:

(*a.*) No federal question is presented.

(*b.*) No right, privilege or immunity is claimed or asserted by appellant in his amended bill, nor does the same appear of record which arises under the constitution and laws of the United States.

In *Borgmeyer* v. *Idler*, 159 U. S., 413, it is held:

> "And in order to maintain that the decision of the Circuit Court of Appeals was not final, it must appear that the jurisdiction of the Circuit Court was not dependent entirely upon the opposite parties being citizens of different states."

As repeatedly held by this court, this jurisdiction must affirmatively appear from appellant's pleadings, and it can only so affirmatively appear to depend upon other grounds than diverse citizenship from averments showing that appellant's cause of action arose under the constitution, laws or treaties of the United States, *and no such averments appear in the pleadings or record.*

In *Bergmeyer* v. *Idler*, *supra*, this court said:

> "But it was not suggested in the summons and statement of claim that the validity or construction of any treaty made under the authority of the United States was drawn in question, and no such question was decided either by the Circuit Court or the Circuit Court of Appeals."

Here no federal question was averred in appellant's amended bill, and none was intimated or decided by the Circuit Court or the Court of Appeals, as affirmatively appears from the decree of the Circuit Court and the opinion of the Court of Appeals, here submitted.

In *Smith* v. *Rockliffe*, 87 Fed., 964, held:

> "The receiver stands upon the footing of the corporation itself. If the corporation had the right to sue the State of California the receiver has undoubtedly succeeded to the right. It is only where the jurisdiction of the United States courts depends upon diverse citizenship that the citizenship of the receiver is to be regarded."

Here it is manifest that if the Atlantic Company had brought suit in the federal court to recover upon the grounds stated in appellant's amended bill the jurisdiction of the federal court to entertain such suit must have exclusively depended upon diversity of citizenship by reason of the absence of all federal questions; and upon an appeal in that suit to the Court of Appeals its judgment would have been final. *Here*, if appellant's suit is *not* ancillary, it *must* for the same reason depend for federal jurisdiction upon diversity of citizenship.

In *Brisenden* v. *Chamberlain*, 53 Fed. Rep., 310, held:

> "Now, the jurisdiction of this court, when it is based on citizenship of the parties, depends upon the citizenship of the parties to the record, and not

of those whom they may represent. (*Bonnafee* v. *Williams*, 3 How., 574; Dill. Rem. of Causes, Sec. 101.) Where the jurisdiction of the United States courts depends upon the citizenship of the parties, it has reference to the parties as persons. A petition for removal must therefore state the personal citizenship of the parties, and not their official citizenship, if there can be such a thing." (*Amory* v. *Amory*, 95 U. S., 187.)

In *Davies* v. *Lathrop*, 12 Fed. Rep., 353 and 854, held:

> " A receiver is a representative as much as an executor, and his personal citizenship will be regarded on motion to remand." (See also Spear Fed. Jud., page 151.)

II.

AS TO JURISDICTION RESTING UPON FEDERAL QUESTIONS.

In *Press Publishing Company* v. *Monroe*, 164 U. S., 105, the court distinguishes the difference between jurisdictional grounds dependent upon diversity of citizenship and jurisdictional grounds dependent upon " the constitution and laws of the United States." In that case this court said:

> " Of suits of a civil nature, at law or in equity, the Circuit Courts of the United States have original jurisdiction, by reason of the citizenship of the parties, in cases between citizens of different states or between citizens of a state and aliens; and by reason of the cause of action, ' in cases arising under the constitution or laws of United States, or treaties made or which shall be made under their authority,' including, of course, suits arising under the patent or copyright laws of the United States."

This diversity of citizenship confers jurisdiction alone. It contributes nothing to the cause of action; while the

constitution or laws of the United States may contribute to the right of action as well as to furnish federal jurisdiction.

This court in that case further said:

> "The plaintiff, in her complaint, did not claim any right under the constitution and laws of the United States, or in any way mention or refer to that constitution or to those laws; and, at the trial, she relied wholly upon a right given by the common law, and maintained her action upon such a right only."

So here, appellant asserted *no* right under the constitution and laws of the United States, but sought to maintain his right to recover in equity dependent upon common law rights for action.

In *Ex parte Jones*, 164 U. S., 693, this court held:

> "But even if another ground were developed in the course of the proceedings, the judgment of the Court of Appeals would be final if the jurisdiction of the Circuit Court were originally invoked solely upon the ground of citizenship. *Colorado Central Mining Co.* v. *Turck*, 150 U. S., 138; *Borgmeyer* v. *Idler*, 159 U. S., 408."

In that case the Court of Appeals refused the prayer for an appeal, and this court was asked to issue a writ of mandamus compelling the Court of Appeals to grant the appeal, but the writ was denied.

III.

We anticipate counsel's contention, namely, that the mere order of a federal court appointing a chancery receiver upon a creditor's bill vests such receiver with authority to invoke federal jurisdiction in an independent and original suit without reference to the diversity of citizenship of the parties thereto, and notwithstanding no federal question is involved.

Observe that appellant in this suit, as receiver, is simply attempting to secure certain assets mentioned in the Pettit bills for the purpose of paying Pettit and other alleged creditors of the Atlantic Company. Therefore, appellant's bill is simply carrying forward the Pettit suits to recover alleged assets which Pettit might have recovered as a judgment creditor on a creditors' bill.

Ry. Co. v. *Ry. Co.*, 111 U. S., 523.

In defining a federal question arising under the constitution or laws of the United States, the court, in the Pacific Railway Removal cases, 115 U. S., page 12, said:

> "But it was objected that several questions of general law might arise in a case besides that which depended upon an act of Congress; the court first disposed of that objection, holding that, as scarcely any case occurs every part of which depends upon the constitution, laws or treaties of the United States, it is sufficient for the purposes of federal jurisdiction if the case *necessarily* involves a question depending on such constitution, laws or treaties."

It is manifest from this opinion, that the constitution in reciting the grounds for federal jurisdiction does not include (as a law of Congress, or as a law of the United States) an order of a court appointing a receiver. Before the order of appointment could be made, jurisdiction

upon one of the grounds stated in the constitution must affirmatively appear, and it is that jurisdiction and the ground upon which it attaches that gives to the order appointing a receiver its validity and judicial authority, and that jurisdiction of the original case in which the receiver was appointed is imputed to any ancillary suit brought by the receiver in the court appointing him, or in a court of co-ordinate jurisdiction.

The authority of a receiver of the federal court to sue may depend upon his order of appointment, but the validity of the order of appointment depends upon the jurisdiction of the court that enters it, and such jurisdiction to appoint such receiver in the Pettit suits depended exclusively upon the diverse citizenship of the parties thereto, and not upon the constitution or laws of the United States.

In *Smith* v. *Rockliffe*, *supra*, the receiver brought suit. Held:

> "The jurisdiction of the United States Court in the present case is not invoked upon the ground that the controversy presents a case arising under the constitution or laws of the United States, nor can jurisdiction be claimed upon the ground of the diverse citizenship of the parties, since, as we have seen, the State itself is a party. It must rest upon some other grant for jurisdiction. The only other grant under which it could be claimed is that which is contained in Sec. 2 of Art. 3 of the Constitution, declaring that the judicial power of the United States shall extend to controversies 'between a state and citizens of another state.' * * * The plaintiff in error must find in this provision his right to proceed in a federal court, and if the Atlantic and Pacific Railroad Company is not a citizen of a state, or a citizen or subject of a foreign state, the controversy is not among those of which jurisdiction is conferred upon the United States Court by the Constitution."

No federal question can arise on the *mere* order of the court appointing a receiver, which will vest appellate jurisdiction in this court under Circuit Court of Appeals Act, unless:

1. Some right of the receiver, created by the order appointing him, is abridged or taken away by a state court (which is not this case), and then *not* unless the receiver puts that question in issue; that is, the right so abridged must be asserted by the federal receiver in his pleadings. No such question is here involved or presented.

Sayward v. *Denny*, 158 U. S., 180, involved jurisdiction depending solely upon some right, title, privilege or immunity under the laws of the United States specially set up and denied by the state court. This court held that if the same was not so specially set up and denied, it could not be made available in this court for jurisdiction.

2. The liability of the defendants alleged in appellant's amended bill cannot be determined in any manner or degree by the order of appointment. That order neither creates any liability against the defendants, nor does it tend in any degree to establish the right of appellant to a money decree, nor to any of the alternative remedies prayed in his amended bill. So that while the order of appointment gives him the right and authority to sue for and on behalf of the Atlantic Company, he must establish the liability of the defendants under general law, and such liability is neither created nor arises under the constitution or laws of the United States.

Press Pub. v. *Monroe*, 164 U. S., *supra*.

Respectfully submitted.

By HENRY W. BLODGETT,
G. W. KRETZINGER,
E. C. FIELD,
For Appellee

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1898.

CHARLES E. POPE, Receiver of the Chicago & South Atlantic Railroad Company,

Appellant,

vs.

LOUISVILLE, NEW ALBANY & CHICAGO RAILWAY COMPANY,

Appellee.

NOTICE.

To JOHN S. MILLER,
Solicitor for Appellant.

Please take notice that on Monday the 30th day of January 1899, at the Capital City of Washington, D. C., upon the opening of the Supreme Court of the United States upon said day, or as soon thereafter as counsel can be heard, we shall move that the appeal in the above cause be dismissed, and in support of said motion we shall present to the Court and file a short transcript of the record and a brief, copies of which are herewith served upon you, when and where you may be present, if you see fit.

HENRY W. BLODGETT,
G. W. KRETZINGER,
E. C. FIELD,

For Appellee.

Service of the above notice, together with copies of brief and short ~~abstract~~ transcript record of ~~transcript~~ mentioned in said notice, is accepted this ..... day of January, 1899, at Chicago, Illinois.

.....

For Appellant.